

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Fiber-to-the-Home Council Americas' Petition	)	
for Rulemaking to Establish a Gigabit	)	WC Docket No. 10-90
Communities Race-to-the-Top Program	)	

**STATEMENT OF THE UTILITIES TELECOM COUNCIL**

Pursuant to Section 1.405 of the Commission's Rules, the Utilities Telecom Council ("UTC") hereby files its Statement in response to the Commission's Public Notice of the above-referenced Petition for Rulemaking.<sup>1</sup> UTC supports the Petition in concept and recommends that the Commission initiate a rulemaking proceeding that takes up the Petition and considers other ways that the Commission could make effective use of unused funds from the Connect America Fund. UTC supports the concept of using unused funds from the Connect America Fund to promote rural broadband, and the Petition's proposal that eligibility should be expanded to include entities that are not necessarily eligible telecommunications carriers (ETCs). UTC is concerned that the Petition as written may be too limited in scope, though. Instead of concentrating on Tier II and Tier III markets and the surrounding communities, the Commission should include more rural areas, as well. That said, UTC believes that the Petition should be taken up as part of a rulemaking proceeding that would consider the broader concept of allowing applicants to apply for unused funds from the Connect America Fund to be able to provide broadband services to unserved and underserved areas of the country.

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<sup>1</sup>Consumer and Governmental Affairs Bureau Reference Information Center Petition for Rulemaking Filed, Public Notice, Report No. 2990, 2013 WL 406885 (Aug. 12, 2013). *See also* Fiber-to-the-Home Council Americas' Petition for Rulemaking to Establish a Gigabit Communities Race-to-the-Top Program in WC Docket No. 10-90 (filed Jul. 23, 2013), hereinafter "Petition".

## **I. Introduction**

UTC is an international trade association for the telecom and information technology interests of utilities and other critical infrastructure industries. Its members include large investor-owned electric, gas and water utilities that may serve millions of customers across the country, as well as relatively small municipal and cooperatively organized utilities that may serve only a few thousand customers each. All of these members have one thing in common: they all own, manage or control extensive private internal communications networks that they use to support the safe, reliable and effective delivery of essential electric, gas and water services to the public at large.

Utilities are uniquely positioned to provide broadband services to the customers that they serve. They already serve customers in rural areas and can leverage existing infrastructure, including fiber, microwave and other technologies to reach customers that are currently unserved or underserved by other communications service providers. Utilities understand that bringing broadband into these areas will promote economic development and improve the quality of education to the communities that they serve. Their business model typically allows for longer returns on investment and provides better quality of service compared to other commercial communications service providers. Thus, they provide affordable, robust and reliable broadband services and they typically see relatively high take rates, low churn and high overall customer satisfaction.

Although utilities are uniquely positioned to deploy broadband in rural areas and they have existing infrastructure that they can leverage, many may need access to CAF in order to deploy broadband in rural areas. Deploying broadband in unserved areas can be an expensive

proposition.<sup>2</sup> While utilities can and do rely on federal funding from the USDA's Rural Utilities Service, those funds are primarily limited to low interest loans.<sup>3</sup> Similarly, utilities can draw from private lenders for funding, as well. Utilities need access to grants as well as loans in order to afford to deploy in high-cost unserved areas. Access to CAF would provide the kind of funding that utilities need to supplement loans to pay for the high cost of offering services in those areas, particularly to deploy robust fiber optic facilities that are future-proofed to meet increasing customer demands both in terms of increased subscribership and higher bandwidth applications.

UTC has created the Rural Broadband Council in order to drive the deployment of broadband services by utilities to rural America. The RBC is composed of utilities that are offering or plan to offer a variety of broadband services -- including video, voice and high-speed Internet -- to rural America. These utilities are currently receiving or are interested in accessing Federal funding to help support the deployment of networks that provide multi-megabit speeds and are affordable and reliable. Connect America Funds represent an attractive option for these utilities but they are hampered by certain barriers, including the cost and delay of applying for and obtaining ETC status. As UTC has explained in this proceeding previously, the Commission should look for ways to promote access to CAF funds by utilities in order to promote competition with price cap carriers, who have a virtual lock on CAF funds and have declined funds that are available, thereby leaving large parts of rural America unserved.<sup>4</sup> These utilities

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<sup>2</sup> For example, one utility estimated that it cost about \$38,000 per mile to install its fiber network, exclusive of equipment. See John Curran, "Smart Grid Demand -- Response Potential Seen as Growth Driver, TR Daily, June 18, 2013.

<sup>3</sup> For a map of deployments using USDA RUS Broadband Loan Program funds see "Service Area Maps" at <http://broadbandsearch.sc.egov.usda.gov/silvermap/broadbandmap.aspx>.

<sup>4</sup> See e.g. Reply Comments of the Utilities Telecom Council in WC Docket No. 09-10 (filed Feb. 11, 2013).

can help advance the Commission's goals by providing broadband services that exceed the current minimum requirements of 4 mbps download and 1 mbps download throughput speeds.<sup>5</sup>

The Petition for Rulemaking by the Fiber-to-the-Home Council Americas (FTTH Council Americas) proposes to take up to \$15 million annually in unused CAF funds for the next five years and make it available for up to 15 projects each year that provide at least 1 gigabit per second service to anchor institutions in Tier II and Tier III markets and their surrounding communities. The service and facilities providers seeking these funds could be either private or public entities, and need not be ETCs. Finally, the funds would be awarded based on criteria, including the ability to deploy the proposed networks within two years after the award of funds.<sup>6</sup> Therefore, UTC is pleased to offer the following Statement on the Petition for Rulemaking by the Fiber-to-the-Home Council Americas.

## **II. The Commission Should Initiate a Rulemaking Proceeding to Consider Using Unused CAF Funds for Broadband to Rural Areas.**

UTC agrees with the FTTH Council Americas that there is a compelling need to promote broadband deployment by making effective use of unused funds from Phase I and II of the Connect America Fund, and that the FCC has the legal authority to do so under Section 254 of the Communications Act of 1934, as amended (the "Act") and Section 706 of the Telecommunications Act. Therefore, UTC supports the adoption of a rulemaking proceeding that takes up the FTTH Council Americas' Petition and considers other ways in which the Commission could make effective use of the unused CAF funds.

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<sup>5</sup> See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Amended by the Broadband Data Improvement Act, GN Docket Nos. 09-137, 09-51, *Report*, 25 FCC Rcd 9556, 9558, at ¶ 5 (2010) (establishing the 4 mbps/1 mbps benchmark for broadband).

<sup>6</sup> Petition at 2-5.

**A. There is a compelling need to make more effective use of CAF.**

As the FTTH Council Americas explains, there is a compelling need for the Commission to make more effective use of CAF in order to promote America's economic growth, social welfare, and citizen engagement.<sup>7</sup> To be sure, the Commission established the CAF and initiated a proceeding to modernize the E-Rate program and implement the President's ConnectEd proposal with those goals in mind. However, the goals of CAF and the goals of the National Broadband Plan are being frustrated by the refusal of price cap carriers to accept funds that are available and to serve unserved areas and underserved areas. In Phase I round 1, price cap carriers only accepted less than 40% of the \$300 million in funds that were made available for broadband, leaving the remaining \$185 available to be rolled over into Phase I round 2. While price cap carriers accepted more funds in round 2, there was still almost \$100 million that was left on the table.<sup>8</sup> This money should be put to good use in the near term. Moreover, introducing competition into the process would promote innovative solutions to provide service into unserved and underserved areas. The current process provides price cap carriers with monopoly control over access to the funds, and if other entities were able to apply for the remaining funds, they may be able to provide service into areas where price cap carriers could not.

As the FTTH Council Americas also explains, utilities and other entities are deploying broadband to communities across the country. In addition to the Chattanooga Electric Power

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<sup>7</sup> Petition at 5-17.

<sup>8</sup> Price cap carriers accepted \$385 million of the \$485 million that was available. See "Up to 600,000 Rural Homes and Businesses in 44 States and Puerto Rico Will Gain Access to Broadband for First Time," News, 2013 WL 4498706 (rel. Aug. 21, 2013); "FCC Acting Chairwoman Mignon Clyburn Announces Up to \$485 Million in New Connect America Fund Investments to Expand Rural Broadband," News, 2013 WL 2285428 (rel. May 22, 2013)(stating that price cap carriers had accepted \$385 million).

Board cited by the FTTH Council Americas in its Petition, there are also many utilities that are deploying broadband services to rural parts of America, as well. For example, Co-Mo Electric Cooperative and its subsidiary Co-Mo Connect in Tipton, Missouri is currently offering broadband packages in tiers of 5, 20, 50 and 100 megabit per second tiers, and it recently announced that it will be offering 1 gigabit service, as well.<sup>9</sup> Co-Mo Connect provides broadband access to its 25,000 customers over a fiber optic network that it began to deploy in 2013 as part of a four-phase project in and around the rural Lake of the Ozarks area.<sup>10</sup> In addition, the network enables a range of intelligent in-home and smart grid applications that can remotely control thermostats and water sprinklers, as well as detect outages when they occur. Similarly, Douglas County PUD is located in central Washington State and it operates its Douglas County Community Network (DCCN), which is a high-speed, broadband network originally designed for Douglas County PUD's electric needs. The current backbone, developed over the last several years, includes hundreds of miles of fiber optic lines, connecting several towns throughout Douglas County. In addition to supporting utility applications, this network provides capacity for services, such as Internet access, being made available to residents, government agencies and businesses in Douglas County. Douglas County has partnered with multiple service providers that provide retail broadband services to customers. Connection

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<sup>9</sup> See "Co-Mo Connect Offers Gigabit Internet" at <http://www.co-mo.coop/news/newsdetail.aspx?itemID=244>. See also Co-Mo Connect website at [http://www.co-mo.net/Co-Mo\\_Connect/HomePage.html](http://www.co-mo.net/Co-Mo_Connect/HomePage.html) (offering Internet service tiers of 5 mbps/3mbps for \$39.95 a month; 20 mbps/10mbps for \$49.95 a month; 50 mbps/20mbps for \$59.95 a month; and 100 mbps/25 mbps for \$99.95 a month.)

<sup>10</sup> Customer density in Co-Mo's service territory is eight customers per mile on average, and the customer density of its Phase I deployment is 12 customers per mile. See "Electric Co-Ops Build Fiber to the Home Networks" at [http://www.bbpmag.com/2013mags/mar-apr/BBC\\_Mar13\\_ElectricCoOps.pdf](http://www.bbpmag.com/2013mags/mar-apr/BBC_Mar13_ElectricCoOps.pdf) See also "Major Announcement! Co-Mo expanding broadband to all members; television is part of plan" at <http://co-mo.coop/news/newsdetail.aspx?itemID=191>. Recently, Co-Mo Connect announced that it will be offering service to California, Missouri, which is outside of the service territory of Co-Mo Electric Cooperative. See "Co-Mo Connect Coming to the City of California" at <http://www.co-mo.coop/news/newsdetail.aspx?itemID=241>

speeds are reportedly upwards of 20 mbps and price varies depending on the service package and the provider.<sup>11</sup> Co-Mo Electric Cooperative and Douglas County are just a few examples of utilities that are offering broadband to rural America; and there are more cooperative and municipal utilities that are either offering or interested in offering broadband to rural America.<sup>12</sup>

Utilities could help to advance the Commission's policy goals of providing broadband to rural America. Utilities are uniquely positioned to promote rural broadband because they have an existing customer relationship with those that live in areas that are currently unserved or underserved by commercial broadband service providers. They have existing infrastructure and billing systems that could be leveraged to support the deployment of broadband networks and the offering of services. They also are able to provide broadband services that are affordable and robust to these areas because they have significant expertise and resources that can be brought to bear. Finally, they can use the broadband networks to offer value added services (e.g. smart grid) and applications along with high-speed Internet.

UTC believes that the Commission should look for ways to promote broadband access to rural areas, as well as broadband access to anchor institutions in Tier II and Tier III and their surrounding communities. In that regard, UTC echoes some of the concerns raised on the record that the proposed Gigabit Communities Race-to-the-Top Program could result in overbuilding

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<sup>11</sup> For more information about DCCN go to <http://www.dccn.net/>.

<sup>12</sup> There are approximately 900 electric cooperatives nationwide, which serve approximately 13% of all customers nationwide. There are also approximately 2000 public power utilities, which include municipalities, state power agencies, and municipal marketing authorities that serve many isolated communities in rural areas. Municipal utilities serve approximately 20% of all customers nationwide. There are also approximately 200 investor-owned utilities in the country, which serve approximately 67% of customers nationwide, including many in rural parts of the country as well. *See also* "Electric Co-Ops Build Fiber to the Home Networks" at [http://www.bbpmag.com/2013mags/mar-apr/BBC\\_Mar13\\_ElectricCoOps.pdf](http://www.bbpmag.com/2013mags/mar-apr/BBC_Mar13_ElectricCoOps.pdf).

and cherry-picking without greater access to unserved rural areas of the country.<sup>13</sup> Rural America still lacks broadband access. The Commission’s most recent Broadband Report found that 19 million Americans—6 percent of the population—still lack access to fixed broadband service at threshold speeds; and in rural areas, nearly one-fourth of the population —14.5 million people—lack access to this service.<sup>14</sup> It also concluded that until the Commission's Connect America reforms are fully implemented, these gaps are unlikely to close – and therefore it found broadband is not yet being deployed in a reasonable and timely fashion.<sup>15</sup> Therefore, UTC believes that the Commission should implement reforms to CAF that close these gaps, particularly in rural areas of the country where the gap is the widest, consistent with Section 706 of the Telecommunications Act.

**B. The Commission has the legal authority to adopt reforms to CAF, including expanding eligibility.**

As the FTTH Council Americas explains in its Petition, the Commission has the legal authority to implement reforms to CAF, including expanding eligibility to permit other entities besides ETCs to apply for CAF.<sup>16</sup> UTC agrees that the FCC may exercise its authority under either Section 706 of the Telecommunications Act or under Section 10 of the Act to expand

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<sup>13</sup> See e.g. Statement of Laurens Municipal Power and Communications in WC Docket No. 09-10 at 2 (filed Sept. 3, 2013)(stating “Laurens believes that the smaller, more rural towns where fiber facilities are lacking should not be overlooked in this process in favor of ultra-high-speed gigabit service in a few select communities. Rather, in the event this Petition results in a rulemaking, the Commission should consider funding more projects of a smaller scope with smaller rural towns given priority.”)

<sup>14</sup> Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Basis, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act. *Eighth Broadband Progress Report*, GN Docket No. 11-121, 27 FCC Rcd. 10342 (2012).

<sup>15</sup> *Id.*

<sup>16</sup> Petition at 33-42.



eligibility to CAF beyond entities that are ETCs.<sup>17</sup>

Consistent with Section 706, the Commission could expand eligibility in order to promote the reasonable and timely deployment of broadband to all Americans. Section 706(b) requires the Commission to “determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion” and, if the Commission concludes that it is not, to “take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.”<sup>18</sup> UTC agrees with the FTTH Council Americas that expanding eligibility will accelerate broadband deployment, consistent with Section 706.<sup>19</sup> It certainly would accelerate deployment by utilities, because obtaining ETC status can be a time consuming and expensive process. Eliminating or streamlining the ETC requirement would free them to provide services more quickly and would allow them to put that money towards broadband deployment. Therefore, the Commission may rely on its authority under Section 706 to provide access to CAF to other entities besides ETCs in order to accelerate broadband to all Americans.

Alternatively, the FCC could exercise its authority under Section 10 to forbear from applying the provisions of Section 254 to limit eligibility to ETCs. Pursuant to Section 10 of the Act, the Commission shall forbear from applying to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, any statutory provision or regulation if it determines that: (1) enforcement of the

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<sup>17</sup> Section 254(e) provides that “only an eligible telecommunications carrier designated under Section 214(e) of this title shall be eligible to receive specific Federal universal service support.” 47 USC §254(e).

<sup>18</sup> 47 U.S.C. §1302(b). “[A]dvanced telecommunications capability” is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video communications using any technology.” 47 U.S.C. §1302(d)(1).

<sup>19</sup> Petition at 41-42.

provision or regulation is not necessary to ensure that the telecommunications carrier's charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the provision or regulation is not necessary to protect consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.

UTC agrees with the FTTH Council Americas that it is not necessary to limit eligibility to ETCs in order to ensure that the charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory. To the contrary, limiting eligibility to ETCs has had the practical effect of protecting price cap carriers from competition from other entities for access to CAF – which has resulted in price cap carriers refusing to accept CAF funds and leaving rural areas unserved by broadband. In addition, as explained by the FTTH Council Americas, limiting eligibility runs contrary to the principle of competitive neutrality adopted by the Commission pursuant to the provisions of Section 254(b)(7).<sup>20</sup> The Commission has already afforded price cap carriers sufficient protections against competition in areas that they commit to serve; it should not protect them in areas that they refuse to serve, as well.<sup>21</sup>

UTC also agrees with the FTTH Council Americas that limiting eligibility is not necessary to protect consumers. Instead, expanded eligibility will lead to greater rural access and deployment of more robust and reliable networks and better services by utilities and others that

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<sup>20</sup> See 47 CFR §254(b)(7) (authorizing the additional principles to those delineated under Section 254(b) “as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this chapter.”)

<sup>21</sup> See Connect America Fund, *Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90, 26 FCC Rcd. 17663 at ¶177 (2011). (concluding that price cap carriers should be protected from competition for five years in exchange for their commitment to serve an unserved area using CAF funds. The Commission explained that the principle of competitive neutrality is “outweighed by the advancement of other Section 254(b) principles, in particular, the principles that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation,” and that consumers in rural areas should have access to advanced services comparable to those available in urban areas.”)

would be able to serve those areas that the price cap carriers refuse to serve. As explained above, utilities have existing infrastructure and resources and already serve areas that are unserved and underserved by commercial broadband service providers. In particular, cooperative utilities are being asked by their members (i.e. consumers) to provide broadband, and they are able to offer high quality affordable broadband services because they operate on a non-profit basis with extended cycles for return on investments. Thus, consumers only stand to benefit if utilities are able to obtain CAF funding without having to become ETCs, and the Commission does not need to limit eligibility to protect consumers.<sup>22</sup>

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<sup>22</sup> See Petition at 32 (arguing that “consumers, rather, would benefit from additional service and facilities providers being able to submit applications,” thereby helping to ensure broadband access and bringing additional benefits to unserved communities.)

### **III. Conclusion**

UTC supports the adoption of a rulemaking proceeding to make unused CAF funds available for broadband deployment to unserved rural areas by utilities and others under expanded eligibility, consistent with the concept proposed in the Petition by the FTTH Council Americas. Doing so would be in the public interest and consistent with the Commission's authority. It would promote the deployment of robust and reliable broadband networks by removing barriers to entry which could otherwise delay or discourage utilities from offering broadband to their customers that are currently unserved or underserved by commercial broadband providers. This would fulfill the Commission's mandate under Section 706 to accelerate broadband deployment, which the Commission has already determined to be not reasonable and timely.

Respectfully submitted,

**Utilities Telecom Council**

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September 11, 2013

Certificate of Service

I hereby certify that a copy of the foregoing “Statement of the Utilities Telecom Council” was served today, September 11, 2013, on the parties below via email and first class mail.

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